



Attorney Docket No. GAY 2-009-3

#3/Election  
10-23-02  
[Signature]

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of )  
Kenneth F. Gay ) Examiner Khoa H. Tran  
Application No.: ) Group Art Unit 8908  
09/954,464 )  
For: "Open Frame Shelf Assembly" )

Commissioner for Patents  
Washington, D. C. 20231

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Response

**GROUP 3600**

Sir:

Applicants note that a restriction has been levied in the above-identified application for United States patent. In this regard, a Group I has been established including claims 1-36 and 42-47, while Group II looks to claims 37-41.

Applicants provisionally elect Group I incorporating claims 1-36 and 42-47 with traverse.

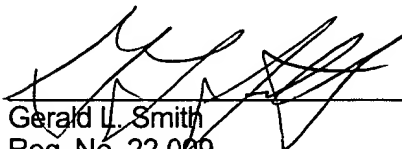
While the subjects of the claim groupings may fall within different classes, it is submitted that the searching by the Patent Office with respect to one grouping will necessarily encompass the other. Thus, it is submitted that the fields of search are coextensive.

§ 121 of the Patent Statute authorizes a requirement for restriction only when two or more independent and distinct inventions are claimed in one application. While the invention defined by the claims of Group I and the invention of the claims of Group II may be distinct and separately patentable in different applications, it is clear that these inventions are dependent in that each is related to the other in operation or effect. The Statute requires both independence and distinctness, not either, and provides such requirement in definite terms. The construction adopted by the Manual of Patent Examining Procedure (MPEP) assumes that the Statute authorizes restriction between inventions which are not independent and distinct, but which are either independent or distinct. It is Applicants' position that the plain meaning of the Statute defies such



construction. For this reason, Applicants request that the restriction requirement be withdrawn.

Respectfully submitted,



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I hereby certify that this correspondence is being deposited on October 8, 2002 with the United States Postal Service as first class mail in an envelope addressed to:

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<b>TRANSMITTAL FORM</b> <i>(to be used for all correspondence after initial filing)</i>	<b>Application Number</b>	09/954,464	
	<b>Filing Date</b>	14 Sept 2001	
	<b>First Named Inventor</b>	Kenneth F. Gay	
	<b>Group Art Unit</b>	3634	
	<b>Examiner Name</b>	Khoa H. Tran	
<b>Total Number of Pages in This Submission</b>	3	<b>Attorney Docket Number</b>	GAY 2-009-3

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Gerald L. Smith Mueller and Smith, LPA
Signature	
Date	October 8, 2002

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